Information on the Court of Justice of the European Communities

1979 – I

I N F O R M A T I O N

on

THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

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1979

Information Office, Court of Justice of the European Communities,
P.O. Box 1406, Luxembourg.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

P.O. Box 1406, Luxembourg

Telephone	:	430 31
Telex (Registry)	:	2510 CURIA LU
Telex (Press and Legal Information Service)	:	2771 CJINFO LU
Telegrams	:	CURIA Luxembourg.

C O N T E N T S

COMPOSITION OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

for the judicial year 1978 to 1979

(as from 7 October 1978)

Order of precedence

H. KUTSCHER, President
J. MERTENS DE WILMARS, President of the First Chamber
LORD A. J. MACKENZIE STUART, President of the Second Chamber
F. CAPOTORTI, First Advocate General
A. M. DONNER, Judge
P. PESCATORE, Judge
H. MAYRAS, Advocate General
M. SØRENSEN, Judge
J.-P. WARNER, Advocate General
G. REISCHL, Advocate General
A. O'KEEFFE, Judge
G. BOSCO, Judge
A. TOUFFAIT, Judge
A. VAN HOUTTE, Registrar

Composition of the First Chamber

J. MERTENS DE WILMARS, President
A. M. DONNER, Judge
A. O'KEEFFE, Judge
G. BOSCO, Judge
H. MAYRAS, Advocate General
J.-P. WARNER, Advocate General

Composition of the Second Chamber

LORD A. J. MACKENZIE STUART, President
P. PESCATORE, Judge
M. SØRENSEN, Judge
A. TOUFFAIT, Judge
F. CAPOTORTI, Advocate General
G. REISCHL, Advocate General

J U D G M E N T S

of the

COURT OF JUSTICE

of the

EUROPEAN COMMUNITIES

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

16 January 1979

Sukkerfabriken Nykøbing Limiteret

v

Ministry of Agriculture

Agriculture - Common organization of the market - Sugar - Relations between sugar manufacturers and beet growers - Rules - Exclusive Community competence - Intervention of the Member States - Prohibition - Derogation pursuant to a Community regulation
(Regulation (EEC) No. 741/75 of the Council, Art. 1)

Since the common organization of the market in sugar covers relations between sugar manufacturers and beet growers such relations, in so far as they specifically concern sugar production, fall exclusively within the competence of the Community so that the Member States are no longer in a position to adopt unilateral measures. In view of possible difficulties in the conclusion of inter-trade agreements concerning conditions for the delivery of sugar-beet, Regulation No. 741/75 is intended to remove that disability on the part of the Member States in the cases defined by the regulation so that the Member States are entitled under Community law to intervene on the basis of their own powers and in accordance with the procedures of their own legal systems.

NOTE The Højesteret of Denmark referred to the Court of Justice for a preliminary ruling two questions relating to the interpretation of Regulation (EEC) No. 741/75 of the Council laying down special rules for the purchase of sugar beet.

In order to interpret that regulation it must be examined in the context of the common organization of the market in sugar. That organization allocates to sugar manufacturers a basic quota or quota A corresponding to the needs of the internal market which may be marketed freely with a supplement up to a maximum quota, called quota B which is treated in the same way as sugar of the basic quota only after payment of a production levy while all sugar produced in excess of the maximum quota may not be disposed of on the internal market but must be exported to third countries.

The regulations presume that the advantages of the guaranteed disposal both of the basic quota and of the maximum quota at minimum prices will be passed on by the sugar manufacturers to sugar beet producers. The common organization of the market lays down general rules relating to the sale and purchase of sugar beet but it also follows clearly that, subject to compliance with the said general rules, the agreements and contracts in question continue to be governed by the national law of contract under which they were concluded.

The appellant in the main proceedings (Sukkerfabriken) is organized in the form of a co-operative, each member of which is bound to cultivate certain quantities of sugar beet and to deliver the quantities harvested to the factory. As the production quantity allocated to Denmark on its accession exceeded the quantities which had previously been laid down by national legislation Sukkerfabriken's basic quota exceeded the quantities which could, under the previous national rules, be produced at guaranteed prices.

The Danish Government held that it was necessary for it to be able to intervene in order to apportion the quantities by Order No. 300 of 20 June 1975. Sukkerfabriken contested the legality of the order before the competent national courts.

In the context of that dispute the Højesteret of Denmark asked the Court of Justice to give a preliminary ruling on the following questions:

A. Where agreement cannot be reached between shareholders in a sugar factory organized as a co-operative undertaking and other traditional sellers of beet to the factory, as to the allocation of the quantities which may be supplied within the factory's basic quota, and where there is no agreement on this point within the trade, is it in accordance with the Community Regulations on sugar, in particular Regulation (EEC) No. 741/75 of the Council of 18 March 1975, for a Member State to determine the allocation, or is it a requirement of the regulation that a Member State can only determine the allocation where conditions other than those expressly stated in the preamble to Regulation No. 741 and in Article 1 (1) thereof are met?

B. If the conditions on which a Member State can lay down rules for allocating the basic quota are met, and an unfair basis for such allocation has not been adopted, is it in accordance with the Community Regulations on sugar, in particular Regulation No. 741/75, for the Member State to make provision for an allocation between the members and other traditional suppliers to the undertaking in question, even though such allocation means that the beet which the members of the co-operative are obliged and entitled under the undertaking's statutes to deliver to the factory cannot entirely be supplied within the basic quota alone?

In reply to those questions the Court of Justice ruled that Article 1 of Regulation (EEC) No. 741/75 of the Council of 18 March 1975 laying down special rules for the purchase of sugar beet is intended to empower Member States, having regard to impediments which might result from Community powers, to proceed in conformity with their national law to allocate delivery rights for beet within the limits of the basic quota of the sugar manufacturer concerned when the condition set out in Article 1 of the regulation is fulfilled.

Opinion of Mr Advocate General J.-P. Warner delivered on 5 December 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

18 January 1979

Société des Usines de Beauport and Others v Council of the European Communities

Joined Cases 103 to 109/78

1. Acts of an institution - Legal nature - Provision amending a regulation - In the nature of a regulation
(Regulation (EEC) No. 3331/74 of the Council, Art. 2; Council Regulation (EEC) No. 298/78)

2. Application for annulment - Natural or legal persons - Measure of direct and individual concern to them - Criteria
(EEC Treaty, Art. 173, second paragraph)

1. Since the nature of the original text of Article 2 of Regulation (EEC) No. 3331/74 is purely that of a regulation so that it cannot therefore be considered to constitute in certain respects a decision, the amendment to that provision made by Regulation (EEC) No. 298/78 is, in the same way as the above-mentioned Article 2, in the nature of a regulation.

2. The conditions laid down in the second paragraph of Article 173 of the Treaty are not fulfilled when only the measures adopted by a Member State pursuant to a provision of the contested regulation can be of direct and individual concern to the applicants.

NOTE Since the seven applicants, sugar-producers in the French overseas departments, considered that their "established rights" had been adversely affected by Regulation (EEC) No. 298/78 of the Council of 13 February 1978 amending Regulation (EEC) No. 3331/74 on the allocation and alteration of the basic quotas for sugar, they requested its annulment under Article 173 of the Treaty.

The applications were dismissed as inadmissible since the contested regulation was not of direct and individual concern to the applicants. Although it is true that they could have been concerned by the use which the Member State might make of the derogating rule adopted, paragraph (3) added to that article [Article 2 of Regulation No. 3331/74] nevertheless provides expressly that "the French Republic may ... reduce the basic quota for each undertaking", thus leaving to that Member State the decision whether or not to reduce the basic quotas and, if the answer is in the affirmative, to decide whether the basic quotas of all or of certain undertakings are to be reduced. It is therefore clear that only the measures adopted by the French Republic under the derogating rule laid down by the regulation in question could be of direct and individual concern to the applicants.

Opinion of Mr Advocate General J.-P. Warner delivered on 13 December 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

18 January 1979

Ministère Public and Others v Van Wesemael and Others
Joined Cases 110 and 111/78

1. References for a preliminary ruling - Powers of the Court - Limits
(EEC Treaty, Art. 177)

2. Services - Freedom to provide - Restrictions - Abolition - Direct effect
(EEC Treaty, Arts. 59, 60 and 63)

3. Services - Freedom to provide - Fee-charging employment agencies for entertainers - Pursuit of the activity - Obligation to obtain a licence or to act through an agency holding a licence - Restriction incompatible with the Treaty - Criteria
(EEC Treaty, Arts. 59 and 60)

1. In the field of judicial co-operation under Article 177 between national courts and the Court of Justice, which are required to make direct and complementary contributions to the application of Community law in a uniform manner in all the Member States, the Court may extract from the wording of the questions, formulated by the national court, having regard to the particulars given by the latter, those elements of Community law which are necessary for that court to be able to resolve in accordance with Community law the legal problem which it has before it.

2. The essential requirements of Article 59 of the Treaty, which was to be implemented progressively during the transitional period by means of the directives referred to in Article 63, became directly and unconditionally applicable on the expiry of that period. Those essential requirements abolish all discrimination against the person providing the service by reason of his nationality or the fact that he is established in a Member State other than that in which the service is to be provided.

3. When the pursuit of the activity of fee-charging employment agencies for entertainers is made subject in the State in which the service is provided to the issue of a licence, that State may not impose on the persons providing the service who are established in another Member State any obligation either to satisfy that requirement or to act through a fee-charging employment agency which holds such a licence when the service is provided by an employment agency which comes under the public administration

of a Member State or when the person providing the services holds in the Member State in which he is established a licence issued under conditions comparable to those required by the State in which the service is provided and his activities are subject in the first State to proper supervision covering all employment agency activity whatever may be the Member State in which the service is provided.

NOTE

In each of these two cases the first accused is charged with having had recourse, when engaging entertainers, to a fee-charging employment agency, situated in France, the operator of which does not hold a licence in Belgium, and the second accused is charged with having placed a person in employment in that State without operating through an office holding a licence in Belgium.

Under the Belgian provisions "the operation of a fee-charging employment agency for entertainers shall be subject to the granting of a licence by a Minister within whose competence the employment falls" and "foreign employment agencies for entertainers, except where a reciprocal agreement between Belgium and their countries is in force, may only procure employment in Belgium through the medium of a licensed fee-charging employment agency."

The accused alleged that the said national provisions were incompatible with the Treaty in that they were a bar to the freedom to provide services referred to in Articles 52, 55, 59 and 60.

The dispute led the national court to refer to the Court of Justice for a preliminary ruling a number of questions: the first raises the problem whether the activities of fee-charging employment agencies for entertainers are classifiable under Group 839 of the ISIC (International Standard Industrial Classification of all economic activities published by the Statistical office of the United Nations) under the term "employment agencies".

The Court of Justice answered in the negative.

The national court also asked whether the Court of Justice confirmed the interpretation that such employment agencies fell within the group which "has not yet been liberalized" which raises the question whether those activities were liberalized within the meaning of Article 59 of the Treaty on the freedom to provide services. It may be deduced from the words "not yet liberalized" that the national court is of the opinion that, even after the transitional period, the liberalization of those activities can be held to have been achieved only in so far as it is laid down in a Community measure.

In reply the Court ruled that the essential requirements of Article 59 of the Treaty which was to be implemented progressively during the transitional period by means of the directives referred to in Article 63, became directly and unconditionally applicable on the expiry of that period.

Those essential requirements, which lay down the freedom to provide services, entail the abolition of any discrimination against a person providing services on grounds of nationality or by virtue

of the fact that he is established in a Member State other than that where the service is to be provided.

In reply to the questions raised in this dispute the Court of Justice ruled that when the activity of fee-charging employment agencies for entertainers is made subject in the State in which the service is provided to the issue of a licence, that State may not impose on the persons providing the service who are established in another Member State any obligation to satisfy that requirement or to act through the medium of a fee-charging employment agency which holds such a licence when the service is provided by an employment agency which comes under the public administration of a Member State or when the person providing the services holds in the Member State in which he is established a licence issued under conditions comparable to those required by the State in which the service is provided and his activities are subject in the first State to proper supervision covering all employment agency activity whatever may be the State in which the service is provided.

Opinion of Mr Advocate General J.-P. Warner delivered on 28 November 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

25 January 1979

Firma A. Racke v Hauptzollamt Mainz

Case 98/78

1. Complex economic situation - Evaluation - Administration - Discretion - Scope - Review by the Court - Limits

2. Agriculture - Common organization of the market - Wine - Wines imported from non-member countries - Reference prices - Monetary compensatory amounts - Purpose of each
(Regulation No. 816/70 of the Council, Art. 9; Regulation No. 974/71 of the Council, Art. 1)

3. Agriculture - Common organization of the market - Wine - Wines imported from non-member countries - Concept of "quality wines" - Absence - Assimilation to table wines
(Regulation No. 816/70 of the Council, Art. 1 (4) (b) and (5))

4. Measures adopted by an institution - Regulation - Publication - Date
(EEC Treaty, Art. 191)

5. Community law - Principles - No retroactivity of regulations - Exceptions - Conditions

6. Agriculture - Monetary compensatory amounts - Rules - Retroactivity - Legality
(Regulations Nos. 649/73 and 741/73 of the Commission)

1. In the event of the evaluation of a complex economic situation, the administration enjoys a wide measure of discretion. In reviewing the legality of the exercise of such discretion, the Court must confine itself to examining whether it contains a manifest error or constitutes a misuse of power or whether the administrative authority did not clearly exceed the bounds of its discretion.

2. Within the framework of the common organization of the market in wine, reference prices, expressed in units of account, are to enable the prices of wine from non-member countries to be brought to the level of prices within the Community, whereas the monetary compensatory amounts system is to enable, in the case of fluctuating exchange rates, differences recorded in prices expressed in national currency following changes in exchange rates to be made up and in particular to prevent the disturbances in trade which might result therefrom.

3. In the absence of a definition of any special concept of "quality wine" coming from third countries as distinct from the concept of "table wine", it must be inferred that for the purposes of Community rules, in particular those relating to the monetary compensatory amounts system, any wine coming from a non-member country is - in the absence of any exception providing otherwise - to be treated as table wine.

4. A regulation is to be regarded as published throughout the Community on the date borne by the issue of the Official Journal containing the text of that regulation. However, should evidence be produced that the date on which an issue was in fact available does not correspond to the date which appears on that issue, regard must be had to the date of actual publication.

5. Although in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected.

6. The system of monetary compensatory amounts introduced by Regulation No. 974/71 implies in principle that the measures adopted take effect as from the occurrence of the events which give rise to them, so that in order to make them fully effective it may be necessary to provide for the applicability of newly-fixed monetary compensatory amounts to facts and events which occurred shortly before the publication of the regulation fixing them in the Official Journal.

NOTE

The Bundesfinanzhof (Federal Finance Court) referred questions to the Court of Justice concerning on the one hand the validity of certain provisions of regulations concerning monetary compensatory amounts applicable to wine and on the other the interpretation of Article 191 of the Treaty and the scope of the regulations in question in so far as their entry into force is concerned.

The main action involves a dispute between a German undertaking and the competent customs authority with regard to the refund of monetary compensatory amounts charged on the occasion of the removal from private customs warehouses of certain quantities of wine imported from Yugoslavia.

The first question is as follows:

"Are Regulations (EEC) Nos. 649/73 of 1 March 1973, 741/73 of 5 March 1973 and 811/73 of 23 March 1973 of the Commission valid even in so far as they each fix in Annex I, No. 6, monetary compensatory amounts for imported red and white wines under tariff subheadings 22.05 C I and C II without making any distinction between the two?"

In point 6 of Annex I to Regulation No. 649/73 fixing the monetary compensatory amounts the system of such amounts is extended to the type of wines in question and the Commission, through its regulations, adapted the amounts to developments in the rates of exchange.

The appellant in the main action claimed that the Commission, by extending the scope of the monetary compensatory amounts, has failed to observe the conditions prescribed in the basic Regulation No. 974/71 of the Council through which it emerges, first, that the power to impose or grant monetary compensatory amounts can only be exercised when fluctuations in the rates of exchange of currencies bring about disturbances in trade in agricultural products. The Court of Justice has already ruled in a number of cases that, where the appraisal of a complex economic situation is concerned, the Commission and the management committee enjoy a wide discretion. The Court has found that in this case it does not appear that the Commission has been guilty of errors or has exceeded the general restrictions on its powers.

The Court of Justice dismissed further complaints made by the appellant in the main action that the Commission had disregarded a number of more specific conditions contained in the provisions at issue.

The second question was as follows:

"Is a regulation to be regarded as published within the meaning of Article 191 of the Treaty establishing the European Economic Community:

(a) on the date borne by the Official Journal in question;

(b) at the time when the Official Journal in question is in fact available at the Office for Official Publications of the European Communities; or

(c) at the time when the Official Journal in question is actually available on the territory of the particular Member State?"

The Court replied to this question with the following ruling:

Consideration of the questions raised has disclosed no factor of such a kind as to affect either the validity of Regulations Nos. 649/73 of 1 March 1973, 741/73 of 5 March 1973 and 811/73 of 23 March 1973 in so far as they fixed monetary compensatory amounts applicable to red and white wines coming under tariff subheadings 22.05 C I and C II imported from third countries, or the validity of Regulations Nos. 649/73 and 741/73 in so far as they were declared applicable with effect from 26 February 1973 and 5 March 1973 respectively;

Article 191 of the EEC Treaty must be interpreted to mean that, unless provision is made to the contrary, a regulation must be regarded as published throughout the Community on the date borne by the Official Journal containing that regulation.

Opinion of Mr Advocate General G. Reischl delivered on 6 December 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

25 January 1979

Weingut Gustav Decker v Hauptzollamt Landau

Case 99/78

1. Measures adopted by an institution - Regulation - Publication - Date
(EEC Treaty, Art. 191)

2. Community law - Principles - No retroactivity of regulations - Exceptions - Conditions

3. Agriculture - Monetary compensatory amounts - Rules - Retroactivity - Legality
(Regulations Nos. 649/73 and 741/73 of the Commission)

1. A regulation is to be regarded as published throughout the Community on the date borne by the issue of the Official Journal containing the text of that regulation. However, should evidence be produced that the date on which an issue was in fact available does not correspond to the date which appears on that issue, regard must be had to the date of actual publication.

2. Although in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected.

3. The system of monetary compensatory amounts introduced by Regulation No. 974/71 implies in principle that the measures adopted take effect as from the occurrence of the events which give rise to them, so that in order to make them fully effective it may be necessary to provide for the applicability of newly-fixed monetary compensatory amounts to facts and events which occurred shortly before the publication of the regulation fixing them in the Official Journal.

NOTE This case concerns the same regulations and the same principles as Case 98/78 above.

Opinion of Mr Advocate General G. Reischl delivered on 6 December 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

31 January 1979

Yoshida Nederland B.V. v Kamer van Koophandel en Fabrieken voor Friesland

Case 34/78

1. Goods - Slide fasteners - Origin - Determination thereof - Criteria - Commission Regulation (EEC) No. 2067/77, Art. 1 - Invalid

In adopting Regulation (EEC) No. 2067/77 concerning the determination of the origin of slide fasteners, the Commission exceeded its power under Regulation (EEC) No. 802/68 of the Council. Article 1 of Regulation No. 2067/77 is therefore invalid.

NOTE

The main action is between a Dutch subsidiary of the Japanese Yoshida group which produces slide fasteners of which the sliders are produced in Japan, and the Kamer van Koophandel en Fabrieken voor Friesland (Chamber of Commerce and Manufacture of Friesland) which refused, in pursuance of Regulation No. 2067/77 of the Commission, to issue a certificate of origin certifying that the fasteners were of Netherlands or Community origin since the sliders used in the manufacture of the fasteners were not produced in "the Netherlands or the EEC".

Prior to the entry into force of the contested regulation certificates of origin were issued as a matter of course in pursuance of Article 5 of Regulation (EEC) No. 802/68 of the Council on the common definition of the concept of the origin of goods.

This raises the problem whether the Commission, in adopting Regulation No. 2067/77, exceeded the powers conferred upon it by the Council for the implementation of the rules laid down in Regulation No. 802/68.

Pursuant to Article 5 of Regulation No. 802/68 "A product in the production of which two or more countries were concerned shall be regarded as originating in the country in which the last substantial process or operation that is economically justified was performed, having been carried out in an undertaking equipped for the purpose, and resulting in the manufacture of a new product or representing an important stage of manufacture".

Article 1 of Regulation No. 2067/77 states that slide fasteners originate in the country in which the following operations took place: "assembly including placing of the scoops or other interlocking elements onto the tapes accompanied by the manufacture of the slider and the forming of the scoops or other interlocking elements".

It is accordingly necessary to consider whether those operations correspond to the criteria laid down in Article 5 of Regulation No. 802/68 and whether they may be regarded as constituting the last substantial process or operation or whether they merely represent an important stage of manufacture.

The Court of Justice, having analysed the various stages of the manufacture of slide fasteners, reached the conclusion that the slider in the apparatus as a whole merely constitutes an individual component and, whilst the slider is characteristic thereof, nevertheless it is of use only when it is fitted together in a duly-assembled apparatus.

When the Commission considered that it must look behind the last process to the manufacture of the slider and establish in that connexion a necessary condition for issuing the certificate of origin, it adopted as the basis for its consideration an operation which is foreign to the objectives of Regulation No. 802/68 and thereby exceeded the powers which it exercised in pursuance of that regulation.

Consequently the Court of Justice ruled that:

1. Article 1 of Commission Regulation (EEC) No. 2067/77 of 20 September 1977 concerning the determination of the origin of slide fasteners is invalid;

2. It is accordingly unnecessary to interpret that article.

Opinion of Mr Advocate General F. Capotorti delivered on 13 December 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

31 January 1979

Yoshida GmbH v Industrie- und Handelskammer Kassel

Case 114/78

1. Goods - Slide fasteners - Origin - Determination thereof - Criteria - Commission Regulation (EEC) No. 2067/77, Art. 1 - Invalid

In adopting Regulation (EEC) No. 2067/77 concerning the determination of the origin of slide fasteners, the Commission exceeded its power under Regulation (EEC) No. 802/68 of the Council. Article 1 of Regulation No. 2067/77 is therefore invalid.

NOTE

This case is identical with the foregoing.

The plaintiff in the main action is the German subsidiary of the Yoshida group.

Opinion of Mr Advocate General F. Capotorti delivered on 13 December 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

1 February 1979

Giuseppe Bardi v Azienda Agricola Paradiso

Case 121/78

Agriculture - Common organization of the markets - Beef and veal - Young male bovine animals intended for fattening - Import quota at a reduced rate of levy - Beneficiaries - Agricultural producers - Concept - Definition by Member States - Restriction to farmers practising farming as their main occupation - Permissibility (Commission Regulation (EEC) No. 2902/77, Art. 1 (5), Council Directive No. 72/159)

Under Commission Regulation (EEC) No. 2902/77 of 22 December 1977 fixing the quantity of young male bovine animals which may be imported on special terms in the first quarter of 1978 the Member States concerned were entitled to specify the categories of agricultural producers who might benefit from the import quota of young male bovine animals under partial or total suspension of the levy within the framework of a policy intended to help to improve cattle rearing and beef and veal production structures.

To allow only farmers practising farming as their main occupation so to benefit is in accordance with the obligations on the Member States arising from Council Directive No. 72/159 of 17 April 1972 on the modernization of farms.

NOTE

In the course of a dispute between Mr Bardi, who runs an agricultural holding, and the Azienda Agricola Paradiso concerning a contract for the supply of 40 quintals of maize for animal fodder, the Pretura di Cecina referred to the Court of Justice the following two questions:

1. Whether the national authorities, within the framework of the special arrangements for the importation of young male bovine animals for fattening laid down in Article 13 of Regulation (EEC) No. 805/68, which arrangements were last amended by Regulations (EEC) Nos. 585/77 and 2902/77, may extend and supplement at their discretion the conditions for admission to the benefit thereof, in particular by restricting the issue of import licences to certain categories of persons unilaterally distinguished from the generality of agricultural producers; or whether on the other hand the above-mentioned Community provisions confer upon all proprietors, whether natural or legal persons, of agricultural undertakings, in particular persons who are engaged in stock-farming, the right to apply in all cases for an import licence which the national authorities of the Member States have no discretionary power to refuse.

2. On the assumption that the Member States may impose further and more restrictive conditions upon admission to the category of agricultural producer, whether the national authorities may determine the persons entitled to benefit according to the criteria on which they rely in implementing the Community directives on the modernization of agricultural structures (Directives Nos. 72/159, 160 and 161/EEC), that is, with a view to a sort of State intervention the means and objectives of which are entirely distinct from and independent of those adopted in connexion with the marketing of individual agricultural products - the said criteria being moreover entirely unrelated to the actual practice of stock-farming and such as to entail the unjustified exclusion of a very large number of stock-farming undertakings, including all those having the structure of a firm or company.

The Court replied with the following ruling:

Pursuant to Commission Regulation (EEC) No. 2902/77 of 22 December 1977 fixing the quantity of young male bovine animals which may be imported on special terms in the first quarter of 1978, the Member States concerned, and in particular the Republic of Italy, were entitled to specify, amongst agricultural producers, the categories of persons entitled to benefit from the partial or total suspension of the levy in respect of the quota of young male bovine animals imported, within the context of a policy intended to help improve cattle-rearing and beef and veal production structures.

Reservation of that benefit to persons practising farming as their main occupation is in accordance with the obligations of the Member States arising from Council Directive No. 72/159/EEC of 17 April 1972 on the modernization of agricultural structures.

Opinion of Mr Advocate General G. Reischl delivered on 17 January 1979.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

7 February 1979

Government of the Kingdom of the Netherlands

v

Commission of the European Communities

1. Agriculture - Common agricultural policy - Financing by the EAGGF - Principles - Assumption of financial responsibility for amounts paid by the Member States - Conditions

(Regulation No. 729/70 of the Council, Arts. 2, 3 and 8)

2. Agriculture - Common agricultural policy - Principles of management - Equality of treatment for traders - Different interpretations of Community law by the Member States - Distortions of competition - Financing by the EAGGF - Not permissible

(EEC Treaty, Arts. 39 and 40; Regulation No. 729/70 of the Council)

3. Agriculture - Common agricultural policy - Expenditure resulting from a mistaken application of Community law - Financing by the EAGGF - Condition - Error which may be attributed to a Community institution

(Regulation No. 729/70 of the Council)

4. Agriculture - Common agricultural policy - Financing - Charging of the expenditure to the EAGGF or to the Member States - Transaction undertaken in the context of the procedure for discharging the accounts.

(Regulation No. 729/70 of the Council, Art. 5 (2) (b))

5. Agriculture - Common organization of the markets - Milk and milk products - Butter from public stocks - Sale at reduced prices for export - Time-limit for exportation - Relevant date - Date of conclusion of the contract of sale

(Regulation No. 1308/68 of the Commission, Art. 3)

1. Cases where, viewed objectively, Community law has been incorrectly applied on the basis of an interpretation adopted in good faith by the national authorities cannot fall under Article 8 of Regulation No. 729/70 but must, on the contrary, be examined in the light of the general provisions of Articles 2 and 3 of the same regulation, according to which refunds granted and intervention undertaken "in accordance with the Community rules" within the framework of the common organization of agricultural markets are to be financed by the EAGGF; those provisions permit the Commission to charge to the EAGGF only sums paid in accordance with the rules laid down in the various sectors of agricultural production while leaving the Member States to bear the burden of any other sum paid, and in particular any amounts which the national authorities wrongly believed themselves authorized to pay in the context of the common organization of the markets.

2. The management of the common agricultural policy in conditions of equality between traders in the Member States requires that national authorities of a Member State should not, by the expedient of a wide interpretation of a given provision, favour traders in that State to the detriment of those in other States where a stricter interpretation is applied. If such distortion of competition between Member States arises despite the means available to ensure the uniform application of Community law throughout the Community it cannot be financed by the EAGGF but must, in any event, be borne by the Member State concerned.

3. In the context of the discharge of the accounts submitted by the Member States in connexion with expenditure financed by the EAGGF, it is for the Commission to bear the financial consequences of expenditure undertaken on the basis of an incorrect application of Community law only where that application is attributable to an institution of the Community.

4. Since, up to the present, no specific procedure for attributing expenditure incurred in connexion with the common agricultural policy has been laid down by Community law for the purpose of settling differences between the Community and the Member States, the discharge of the accounts by the Commission pursuant to Article 5 (2) (b) of Regulation No. 729/70 necessarily entails the attribution of expenditure either to the Commission or to the Member State concerned.

5. The period of 30 days laid down in Article 3 of Regulation No. 1308/68 for the exportation to third countries of butter from public stocks which has been sold at a reduced price must be calculated from the date of the conclusion of the contract of sale and not from the date when the butter left the store.

NOTE See page 25.

Opinion of Mr Advocate General F. Capotorti delivered on 5 December 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

7 February 1979

French Government v Commission of the European Communities

Joined Cases 15 and 16/76

1. Action for annulment - Measure impugned - Assessment of legality - Criteria

(EEC Treaty, Art. 173)

2. Procedure in respect of the failure by a Member State to fulfil its obligations - Objective - Finding of such failure - Discontinuation of the procedure by the Commission - Admission of the legality of the contested conduct - Not so

(EEC Treaty, Art. 169)

3. Agriculture - Common agricultural policy - Financing by the EAGGF - Procedure for the discharge of the accounts - Objective - Powers of the Commission - Limits

(Regulation No. 729/70 of the Council, Art. 5 (2) (b))

4. Agriculture - Common organization of the markets - Aids - Payment in disregard of the Community rules - Failure to adhere to the formalities relating to proof - Consequences - Assumption of the financial consequences by the EAGGF - Not permissible - Subsequent rectification - Effects

(Regulation No. 729/70 of the Council, Art. 5 (2) (b))

5. Community law - Application by the Member States - Discriminatory unilateral measures - Not permissible

1. In the context of an application for annulment under Article 173 of the Treaty the legality of the contested measure must be assessed on the basis of the elements of fact and of law existing at the time when the measure was adopted.

2. The procedure under Article 169 of the Treaty for failure to fulfil obligations is for the purpose of obtaining a declaration that the conduct of a Member State infringes Community law and of terminating that conduct; the Commission remains at liberty, if the Member State has put an end to the alleged failure, to discontinue the proceedings but such discontinuance does not constitute recognition that the contested conduct is lawful.

3. As Community law now stands the procedure for the discharge of the accounts submitted by the Member States in connexion with expenditure financed by the EAGGF serves to determine not only that the expenditure was actually and properly incurred but also that the financial burden of the common agricultural policy is correctly apportioned between the Member States and the Community and in this respect the Commission has no discretionary power to derogate from the rules regulating the allocation of expenses.

4. In cases where the Community rules relating to the agricultural markets authorize payment of an aid only on condition that certain formalities relating to proof are complied with at the time of payment, aid paid in disregard of that condition is not in accordance with Community law and the related expenditure cannot, therefore, in principle be charged to the EAGGF when the accounts for the financial year in question are discharged, without prejudice to any possibility of the part of the Commission to take account, during another financial year, of the subsequent production of the requisite proof.

5. In applying Community rules the Member States cannot unilaterally adopt additional measures which are such as to compromise the equality of treatment of traders throughout the Community and thus to distort competitive conditions between the Member States.

NOTE See page 25

Opinion of Mr Advocate General F. Capotorti delivered on 5 December 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

7 February 1979

Government of the Federal Republic of Germany v Commission

Case 18/76

1. Agriculture - Common agricultural policy - Financing by the EAGGF - Principles - Assumption of financial responsibility for amounts paid by the Member States - Conditions

(Regulation No. 729/70 of the Council, Arts. 2, 3 and 8)

2. Agriculture - Common agricultural policy - Principles of management - Equality of treatment for traders - Different interpretations of Community law by the Member States - Distortions of competition - Financing by the EAGGF - Not permissible

(EEC Treaty, Arts. 39 and 40; Regulation No. 729/70 of the Council)

3. Agriculture - Common agricultural policy - Financing - Charging of the expenditure to the EAGGF or to the Member States - Transaction undertaken in the context of the procedure for discharging the accounts

(Regulation No. 729/70 of the Council, Art. 5 (2) (b))

4. Agriculture - Common organization of the markets - Milk and milk products - Aid for skimmed-milk powder used for animal feeding-stuffs - Detailed rules for the grant thereof - Formalities relating to proof - Imperative nature

(Regulation No. 986/68 of the Council; Regulations Nos. 1106/68 and 332/70 of the Commission)

5. Agriculture - Common organization of the markets - Milk and milk products - Butter from public stocks - Sale at reduced prices for export - Time-limit for exportation - Relevant date - Date of conclusion of the contract of sale

(Regulation No. 1308/68 of the Commission, Art. 3)

1. Cases where, viewed objectively, Community law has been incorrectly applied on the basis of an interpretation adopted in good faith by the national authorities cannot fall under Article 8 of Regulation No. 729/70 but must, on the contrary, be examined in the light of the general provisions of Articles 2 and 3 of the same regulation, according to which refunds granted and intervention undertaken "in accordance with the Community rules" within the framework of the common organization of agricultural markets are to be financed by the EAGGF; those

provisions permit the Commission to charge to the EAGGF only sums paid in accordance with the rules laid down in the various sectors of agricultural production while leaving the Member States to bear the burden of any other sum paid, and in particular any amounts which the national authorities wrongly believed themselves authorized to pay in the context of the common organization of the markets.

2. The management of the common agricultural policy in conditions of equality between traders in the Member States requires that national authorities of a Member State should not, by the expedient of a wide interpretation of a given provision, favour traders in that State to the detriment of those in other States where a stricter interpretation is applied. If such distortion of competition between Member States arises despite the means available to ensure the uniform application of Community law throughout the Community it cannot be financed by the EAGGF but must, in any event, be borne by the Member State concerned.

3. Since, up to the present, no specific procedure for attributing expenditure incurred in connexion with the common agricultural policy has been laid down by Community law for the purpose of settling differences between the Community and the Member States, the discharge of the accounts by the Commission pursuant to Article 5 (2) (b) of Regulation No. 729/70 necessarily entails the attribution of expenditure either to the Commission or to the Member State concerned.

4. As the objective of the Community provisions relating to the detailed rules for the grant of aid for skimmed-milk powder intended for animal feeding-stuffs is to exclude the possibility of double payment and the possibility of the goods being returned to ordinary commercial channels, the formalities relating to proof required by those provisions must be strictly adhered to for that purpose, and in particular to forestall any fraudulent practice intended to evade the supervisory measures. Consequently, the regulatory provisions in question do not allow the proofs required by them to be furnished by other means.

5. The period of 30 days laid down in Article 3 of Regulation No. 1308/68 for the exportation to third countries of butter from public stocks which has been sold at a reduced price must be calculated from the date of the conclusion of the contract of sale and not from the date when the butter left the store.

NOTE Concerning all the EAGGF cases

The Governments of the Federal Republic of Germany, the Kingdom of the Netherlands and the French Republic brought actions against the Commission for the annulment of Commission decisions concerning the discharge of the accounts in respect of the European Agricultural Guidance and Guarantee Fund (EAGGF) expenditure for the financial years 1971 and 1972.

The action brought by the Federal Republic of Germany sought the annulment of the decisions in so far as they do not recognize expenditure incurred by the applicant Government amounting to DM 26 094 195.99 for the financial year 1971 and DM 13 325 660.12 for the financial year 1972 as chargeable to the EAGGF.

In challenging the legality of the decisions taken by the Commission, the applicant Government relies upon Regulation No. 729/70 of the Council, Article 8 of which provides as follows:

> "In the absence of total recovery, the financial consequences of irregularities or negligence shall be borne by the Community, with the exception of the consequences of irregularities or negligence attributable to administrative authorities or other bodies of the Member States".

The Government argues that that provision must be interpreted as meaning that the financial consequences of erroneous application of a Community provision by a national authority must be borne by the Community in all cases in which the error is not due to a fault on the part of the bodies of the Member State concerned but results from an interpretation which, although objectively incorrect, was adopted in good faith.

The Commission, on the other hand, denies that that provision is relevant to the solution of the point at issue, arguing that the provision concerns irregularities and negligence attributable to individuals in their capacity as recipients of EAGGF expenditure, and applies to irregularities and negligence attributable to Member States only in the exceptional case of their having been committed by public servants acting in breach of their professional duties.

The Commission admits, however, that according to general legal principles it is for the Community to bear the financial consequences of erroneous application of Community law where such erroneous application can be attributed to an institution of the Community.

In order to interpret Article 8 of Regulation No. 729/70, it is necessary to consider its context and the aim of the rules at issue. It is important to note that Article 8 defines the principles according to which the Community and the Member States are to organize the offensive against fraud and other irregularities in relation to transactions financed by the EAGGF. Regard must also be had to the purpose of Regulation No. 729/70. The operation of the common agricultural policy in conditions of equality between the traders of the Member States precludes the national authorities of a Member State from favouring the traders of that State by means of a broad interpretation of a particular provision to the detriment of the traders of other Member States in which a more restrictive interpretation is maintained.

Such a distortion of competition between the Member States cannot be financed by the EAGGF, but must remain chargeable to the Member State concerned.

Therefore it must be concluded that the provisions of Article 8 of Regulation No. 729/70 are not applicable to the transactions at issue.

Having thus laid down the principles of interpretation, the judgment considers, as regards each of the items in question, whether the expenditure which the Commission refused to charge to the EAGGF was incurred in accordance with the Community provisions applicable to the sector concerned.

Aid for skimmed-milk powder used for feeding-stuffs

Analysis of the Community rules at issue indicates that, since the expenditure under consideration was not incurred in accordance with Community law, the Commission's refusal to charge it to the EAGGF is justified.

Aid for the purchase of butter by persons in receipt of social assistance

The Commission refused to charge to the EAGGF the sums of DM 17 930 880.40 for the financial year 1971 and DM 12 051 258.00 for the financial year 1972, which were paid by the authorities of the Federal Republic of Germany as aid for the purchase of butter by persons in receipt of social assistance.

Consideration of this question led the Court to annul the contested decisions in so far as the Commission refused to charge to the EAGGF the contested amounts paid by the applicant Government as aid for the purchase of butter by persons in receipt of social assistance.

Sale at a reduced price of butter from public stocks for export

Since the expenditure considered under this heading was not incurred in accordance with Community law, the Commission's refusal to charge it to the EAGGF is justified.

Buying back of butter sold at a reduced price and intended for transformation into concentrated butter

The conclusion is identical to that under the previous heading.

Costs of crushing and repacking sugar

The Commission's refusal to charge the expenditure considered under this heading to the EAGGF is justified.

The Court:

1. Annulled Commission Decisions Nos. 76/141 and 76/147 concerning the discharge of the accounts presented by the Federal Republic of Germany in respect of the EAGGF, Guarantee Section, expenditure for the financial years 1971 and 1972, in so far as the amounts of DM 17 930 880.40 and DM 12 051 258.00 respectively were not charged to the Fund.

2. Dismissed the action as regards the other heads of claim.

3. Ordered the applicant Government to bear its own costs and three quarters of the Commission's costs.

Opinion of Mr Advocate General F. Capotorti-delivered on 5 December 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

7 February 1979

Knoors v Secretary of State for Economic Affairs (Netherlands)

Case 115/78

1. Freedom of establishment and freedom to provide services - Provisions of the Treaty - Persons to whom they apply - Scope - Limits
(EEC Treaty, Articles 52 and 59)

2. Freedom of establishment and freedom to provide services - Industry and small craft industries - Activities of self-employed persons in manufacturing and processing industries - Conditions for access and exercise - Transitional measures - Council Directive No. 64/427 - Beneficiaries - Concept

1. Although it is true that the provisions of the Treaty relating to establishment and the provision of services cannot be applied to situations which are purely internal to a Member State, the position nevertheless remains that the reference in Article 52 to "nationals of a Member State" who wish to establish themselves "in the territory of another Member State" cannot be interpreted in such a way as to exclude from the benefit of Community law a given Member State's own nationals when the latter, owing to the fact that they have lawfully resided on the territory of another Member State and have there acquired a trade qualification which is recognized by the provisions of Community law, are, with regard to their State of origin, in a situation which may be assimilated to that of any other persons enjoying the rights and liberties guaranteed by the Treaty.

However, it is not possible to disregard the legitimate interest which a Member State may have in preventing certain of its nationals, by means of facilities created under the Treaty, from attempting wrongly to evade the application of their national legislation as regards training for a trade.

2. Council Directive No. 64/427 laying down detailed provisions concerning transitional measures in respect of activities of self-employed persons in manufacturing and processing industries falling within ISIC Major Groups 23-40 (Industry and small craft industries) is based on a broad definition of the "beneficiaries" of its provisions, in the sense that the nationals of all Member States must be able to avail themselves of the liberalizing measures which it

lays down, provided that they come objectively within one of the situations provided for by the directive, and no differentiation of treatment on the basis of their residence or nationality is permitted.

Thus the provisions of the directive may be relied upon by the nationals of all the Member States who are in the situations which the directive defines for its application, even in respect of the State whose nationality they possess.

NOTE

The College van Beroep voor het Bedrijfsleven (The Netherlands administrative court of last instance in matters of trade and industry) referred a preliminary question to the Court on the interpretation of Council Directive No. 64/427 laying down detailed provisions concerning transitional measures in respect of activities of self-employed persons in manufacturing and processing industries (industry and small craft industries).

The plaintiff in the main action, Mr Knoors, a Netherlands national resident in Belgium, was for a long time employed by a plumbing undertaking and after 1970 he continued in this trade in Belgium but on his own account.

When he applied to the Netherlands authorities for permission to carry on business there it was refused on the grounds that he did not have the trade qualifications required under Netherlands law.

The Netherlands authorities notified Mr Knoors that as a Netherlands national in the Netherlands he could not be considered a beneficiary under the Council Directive which provides that where, in a Member State, access to certain economic activities is subject to possession of certain qualifications that State shall accept as sufficient evidence of such qualifications the fact that the activity in question has been pursued in another Member State.

The foregoing led the Netherlands court to submit the following question:

> "Must Directive No. 64/427/EEC of 7 July 1964 of the Council of the European Economic Community be interpreted as meaning that the expression 'beneficiaries' as referred to and as defined in Article 1 (1) of the directive also includes persons who possess and have always possessed solely the nationality of the host Member State?"

Directive No. 64/427 which is intended to make it easier to attain freedom of establishment and freedom to provide services in respect of industrial and small craft industries, must be seen in the context of the general programme for the abolition of restrictions on freedom to provide services and of the relevant provisions of the Treaty. The directive takes account of the difficulties arising from the circumstance that the stringency of the conditions for the taking up and pursuit of such activities varies from one State to another. It accordingly provides that where, in a Member State, the taking up and pursuit of the said activities is subject to the possession of certain qualifications "that Member State shall accept as sufficient evidence of such knowledge and ability the fact that the activity in question has been pursued in another Member State".

The general programme for the abolition of restrictions on freedom to provide services defines as beneficiaries the "nationals of the Member States established within the Community" without distinction on the basis of the nationality or residence of the persons concerned.

It may therefore be taken that Directive No. 64/427 is based on a broad concept of "beneficiary" and that its provisions can be relied upon by the nationals of all Member States who fulfil the conditions for the application of the directive laid down therein, even against the State of which they are nationals.

In fact the basic freedoms (of establishment and to provide services) in the Community system could not be fully attained if the Member States could refuse to apply the provisions of Community law to such of their nationals as had availed themselves of their rights of freedom of movement and establishment to acquire the trade qualifications mentioned by the directive in a country other than that of which they are nationals.

The Court of Justice, considering the question referred to it, ruled that Council Directive No. 64/427 of 7 July 1964 laying down detailed provisions concerning transitional measures in respect of activities of self-employed persons in manufacturing and processing industries falling within ISIC Major Groups 23-40 (Industry and small craft industries) must be understood to mean that the "beneficiaries" referred to in Article 1 (1) of the directive also include persons who possess the nationality of the host Member State.

Opinion of Mr Advocate General G. Reischl delivered on 12 December 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
7 February 1979

Commission of the European Communities

v

United Kingdom of Great Britain and Northern Ireland

Case 128/78

1. Measures adopted by an institution - Regulation - Application - Obligations of Member States
(EEC Treaty, Article 189)

2. Obligations of Member States - Unilateral action contrary to the Treaty - Failure in the duty of solidarity

1. It cannot be accepted that a Member State should apply in an incomplete or selective manner provisions of a Community regulation so as to render abortive certain aspects of Community legislation which it has opposed or which it considers contrary to its national interests. Practical difficulties which appear at the stage when a Community measure is put into effect cannot permit a Member State unilaterally to opt out of fulfilling its obligations.

2. For a State unilaterally to break, according to its own conception of national interest, the equilibrium between the advantages and obligations flowing from its adherence to the Community brings into question the equality of Member States before Community law and creates discrimination at the expense of their nationals. This failure in the duty of solidarity accepted by Member States by the fact of their adherence to the Community strikes at the very root of the Community legal order.

NOTE

The Commission applied to the Court for a declaration that the United Kingdom had failed to fulfil its obligations under the Treaty by failing to adopt in good time the measures which remain to be taken to implement Regulation No. 1463/70 of the Council on the introduction of recording equipment in road transport, and by failing to consult previously with the Commission as provided for by the said regulation.

That regulation is intended to replace the individual control book by recording equipment, called a tachograph, for road transport.

The British legislation has maintained in force the obligations relating to the keeping of an individual control book. The defendant claims that this arrangement is sufficient to meet the objectives of promoting road safety, of social progress, and of the harmonization of conditions of competition. It maintains that the implementation

of Regulation No. 1463/70 in its territory is best achieved by the installation and use of the recording equipment on a voluntary basis, though this may be made compulsory at an appropriate time. It adds that implementation of the regulation by means of compulsory measures would meet with active resistance from the sectors concerned, in particular the trade unions, which would result in strikes in the transport sector and would therefore seriously damage the whole economy of the country.

The Court did not uphold this line of argument. Article 189 of the Treaty provides that a regulation shall be "binding in its entirety" in the Member States. The Court affirmed its earlier case-law to the effect that it cannot be accepted that a Member State should apply provisions of a Community regulation in an incomplete or selective manner so as to render abortive certain aspects of Community legislation which it considers contrary to its national interests.

The Court ruled that in permitting Member States to profit from the advantages of the Community, the Treaty imposes on them also the obligation to respect its rules. For a State unilaterally to break, according to its own conception of its national interest, the equilibrium between the advantages and obligations flowing from its adherence to the Community brings into question the equality of Member States before Community law and creates discrimination at the expense of their nationals. This failure in the duty of solidarity strikes at the very root of the Community legal order.

The Court declared that the United Kingdom had failed to fulfil its obligations under the Treaty, and ordered it to pay the costs.

Opinion of Mr Advocate General H. Mayras delivered on 18 January 1979.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

7 February 1979

Ministère Public v Vincent Auer

Case 136/78

Freedom of establishment - Veterinary surgeons - Degrees obtained in a Member State - Practice in another Member State - Conditions - Period prior to the implementation of the directives for the mutual recognition of diplomas and the co-ordination of national provisions

(EEC Treaty, Arts. 52 and 57; Council Directives Nos. 78/1026 and 78/1027)

Article 52 of the Treaty must be interpreted as meaning that for the period prior to the date on which the Member States are required to have taken the measures necessary to comply with Council Directives Nos. 78/1026 and 78/1027 of 18 December 1978, the nationals of a Member State cannot rely on that provision with a view to practising the profession of veterinary surgeon in that Member State on any conditions other than those laid down by national legislation.

NOTE

Mr Auer, who was born in Austria, studied veterinary medicine in Vienna (Austria), Lyon and finally in Parma, where he was awarded the degree of "laurea in medicina veterinaria" (doctor of veterinary medicine) on 1 December 1956.

In 1958 he took up residence in Mulhouse, where he practised veterinary medicine. He acquired French nationality by naturalization in 1961, and several times requested the application to himself of the French Decree No. 62-1481 of 27 November 1962 "relating to the medical and surgical treatment of animals by veterinary surgeons who have acquired or re-acquired French nationality".

Article 1 of that Decree provides that authorization to undertake the medical and surgical treatment of animals may be granted to veterinary surgeons having acquired or re-acquired French nationality who do not hold the State doctorate referred to in Article 340 of the Code Rural. The Decree provides that no authorization may be granted to those concerned if they do not hold either certain stated degrees or "a degree of veterinary surgeon awarded abroad which an Examining Committee has recognized as being equivalent to a French degree".

The competent Examining Committee found that it could not recognize the degree produced by Mr Auer as being equivalent to a French degree for the purpose of exercising the profession of veterinary surgeon but that Mr Auer had nevertheless undertaken medical treatment of animals, which gave rise to a criminal prosecution.

This led the Cour d'Appel, Colmar, to refer for a preliminary ruling a question intended to ascertain in substance whether, by virtue of the Community provisions on freedom of establishment as in force at the time of the facts of the case before the national court, the person concerned was entitled to rely in France upon the rights to practise as a veterinary surgeon which he had acquired in Italy.

The situation referred to by the national court is that of a natural person who is a national of the Member State in which he actually resides, and who relies upon the provisions of the Treaty concerning freedom of establishment to claim authorization to exercise the profession of veterinary surgeon in that State, when he does not hold the degrees required of its own nationals but possesses qualifications and diplomas acquired in another Member State which would entitle him to practise that profession in that other Member State.

It should also be stated that the field of mutual recognition of diplomas in veterinary medicine was regulated by Council Directive No. 78/1026 of 18 December 1978. Therefore it is necessary in this case to consider to what extent the provisions of Articles 52 to 57 of the Treaty could be relied upon, in situations such as that described above, by nationals of the Member State of establishment themselves.

It emerges from the provisions of Articles 54 and 57 of the Treaty that freedom of establishment is not completely ensured by the mere application of the rule of equal treatment with nationals, since application of that rule leaves intact all restrictions other than those resulting from non-possession of the nationality of the host Member State, in particular those resulting from disparities between the conditions for the acquisition of an appropriate professional qualification which are laid down by the different laws of the Member States.

In order completely to ensure freedom of establishment, Article 57 provides that the Council shall issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications. There is no trace in any of those directives of discrimination on grounds of nationality.

The Court ruled that Article 52 of the Treaty must be interpreted to mean that, in respect of the period before the date on which the Member State must have taken the measures necessary to comply with Council Directives Nos. 78/1026 and 78/1027 of 18 December 1978, nationals of a Member State may not avail themselves of that provision for the purpose of exercising the profession of veterinary surgeon in that Member State otherwise than on the terms laid down by the national legislation.

Opinion of Mr Advocate General J.-P. Warner delivered on 12 December 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

13 February 1979

Hoffman-La Roche v Commission of the European Communities

Case 85/76

1. Community law - Observance of the right to be heard - Fundamental principle - Field of application - Competition - Administrative proceedings - Scope of the principle
(Council Regulation No. 17, Art. 19 (1); Regulation of the Commission No. 99/63, Art.4)

2. Competition - Administrative proceedings - Commission's powers of investigation - Information covered by professional secrecy - Use against an undertaking of the obligation to observe professional secrecy - Condition - Observance of the right to be heard
(Council Regulation No. 17, Art. 20 (2))

3. Competition - Dominant position - Relevant market - Delimitation - Product usable for different purposes
(EEC Treaty, Art. 86)

4. Competition - Dominant position - Concept
(EEC Treaty, Art. 86)

5. Competition - Dominant position - Existence - Market share - Other criteria
(EEC Treaty, Art. 86)

6. Competition - Dominant position - Abuse - Concept
(EEC Treaty, Art. 86)

7. Competition - Dominant position - Abuse - Agreement to obtain supplies exclusively from one supplier - Fidelity rebates - "English" clause
(EEC Treaty, Art. 86)

8. Competition - Dominant position - Abuse - Fidelity rebates - Application of dissimilar conditions to equivalent transactions
(EEC Treaty, Art 86 (c))

1. Observance of the right to be heard is in all proceedings **in** which sanctions, in particular fines or penalty payments, may be imposed a fundamental principle of Community law which must be respected even if the proceedings in question are administrative proceedings.

In the matter of competition and in the context of proceedings for a finding of infringements of Articles 85 or 86 of the Treaty, observance of the right to be heard requires that the undertakings concerned must have been afforded the opportunity to make known their views on the truth and relevance of the facts and circumstances alleged and on the documents used by the Commission in support of its claim that there has been an infringement.

2. The obligation on the Commission under Article 20 (2) of Regulation No. 17 to observe professional secrecy must be reconciled with the right to be heard. By providing undertakings from whom information has been obtained with a guarantee that their interests, which are closely connected with observance of professional secrecy, are not jeopardized, that provision enables the Commission to collect on the widest possible scale the requisite data for the fulfilment of its task of supervision without the undertakings being able to prevent it from doing so; the Commission may not however use, to the detriment of an undertaking in proceedings for a finding of an infringement of the rules on competition, facts or documents which it cannot in its view disclose if such a refusal of disclosure adversely affects that undertaking's opportunity to make known effectively its views on the truth or implications of those facts or documents or again on the conclusions drawn by the Commission from them.

3. If a product could be used for different purposes and if these different uses are in accordance with economic needs, which are themselves also different, there are good grounds for accepting that this product may, according to the circumstances, belong to separate markets which may present specific features which differ from the standpoint both of the structure and of the conditions of competition. However this finding does not justify the conclusion that such a product together with all the other products which can replace it as far as concerns the various uses to which it may be put and with which it may compete, forms one single market. The concept of the relevant market in fact implies that there can be effective competition between the products which form part of it and this presupposes that there is a sufficient degree of interchangeability between all the products forming part of the same market in so far as a specific use of such products is concerned.

4. The dominant position referred to in Article 86 of the Treaty relates to a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately

of the consumers. Such a position does not preclude some competition, which it does where there is a monopoly or a quasi-monopoly, but enables the undertaking which profits by it, if not to determine, at least to have an appreciable influence on the conditions under which that competition will develop, and in any case to act largely in disregard of it so long as such conduct does not operate to its detriment.

5. Very large market shares are highly significant evidence of the existence of a dominant position. Other relevant factors are the relationship between the market shares of the undertaking concerned and of its competitors, especially those of the next largest, the technological lead of the undertaking over its competitors, the existence of a highly developed sales network and the absence of potential competition.

6. The concept of abuse is an objective concept relating to the behaviour of an undertaking in a dominant position which is such as to influence the structure of a market where, as a result of the very presence of the undertaking in question, the degree of competition is weakened and which, through recourse to methods different from those which condition normal competition in products or services on the basis of the transactions of commercial operators, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition.

7. An undertaking which is in a dominant position on a market and ties purchasers - even if it does so at their request - by an obligation or promise on their part to obtain all or most of their requirements exclusively from the said undertaking abuses its dominant position within the meaning of Article 86 of the Treaty, whether the obligation in question is stipulated without further qualification or whether it is undertaken in consideration of the grant of a rebate. The same applies if the said undertaking, without tying the purchasers by a formal obligation, applies, either under the terms of agreements concluded with these purchasers or unilaterally, a system of fidelity rebates, that is to say discounts conditional on the customer's obtaining all or most of its requirements from the undertaking in a dominant position.

Obligations of this kind to obtain supplies exclusively from a particular undertaking, whether or not they are in consideration of rebates or of the granting of fidelity rebates intended to give the purchaser an incentive to obtain his supplies exclusively from the undertaking in a dominant position, are incompatible with the objective of undistorted competition within the Common Market, because they are not based on an economic transaction which justifies this burden or benefit but are designed to deprive the purchaser of or restrict his possible choices of sources of supply and to deny other producers access to the market.

The abuse of a dominant position and the restriction of competition as attributes of the contracts in question are not avoided by the so-called "English" clause contained in them whereby the purchasers undertake to notify the undertaking in a dominant position of any more favourable offer made to them by competitors and are free, if that undertaking does not adjust its prices to the said offer, to obtain their supplies from competitors. In these circumstances a clause of this kind is such as to enable the undertaking in a dominant position to realize an abuse of that dominant position.

8. The effect of fidelity rebates is to apply dissimilar conditions to equivalent transactions with other trading parties in that two purchasers pay a different price for the same quantity of the same product depending on whether they obtain their supplies exclusively from the undertaking in a dominant position or have several sources of supply.

NOTE On 18 August 1976 Hoffmann-La Roche, an undertaking governed by Swiss law (hereinafter referred to as "Roche"), instituted proceedings for the annulment of the Commission Decision of 9 June 1976 relating to a proceeding under Article 86 of the Treaty establishing the European Economic Community (IV/29.020 - Vitamins) (which was adopted in connexion with the abuse of a dominant position) or in the alternative for the annulment of Article 3 of that decision whereby a fine of 300 000 units of account, being DM 1 098 000, was imposed on the applicant.

In that decision it was found that Roche enjoyed a dominant position within the common market within the meaning of Article 86 of the Treaty in respect of seven markets in vitamins A, B2, B3 (pantothenic acid), B6, C, E and H (biotin) and that it had infringed that article in abuse of that position by concluding agreements as early as 1964, but in particular between 1970 and 1974, with 22 purchasers of such vitamins containing an obligation on the purchasers or an incentive consisting of fidelity rebates to buy all or most of their vitamin requirements exclusively, or in preference, from Roche.

The infringement of Article 86 of the Treaty

According to Roche the Commission has infringed Article 86 of the Treaty in that

1. The contested decision wrongly maintains that the applicant occupies a dominant position, provides a mistaken interpretation of the concept and makes a mistaken application of it in the present case;

2. The contested decision wrongly maintains that Roche has abused its dominant position;

3. The contested decision wrongly maintains that the applicant's behaviour was capable of producing an appreciable effect on intra-Community trade.

(1) The existence of a dominant position

In appraising whether Roche, as has been alleged, occupies a dominant position it is necessary to distinguish the markets in question with regard both to geography and to the product.

The Commission has maintained that Roche occupies a dominant position in respect of seven out of the eight vitamin groups produced by it, namely A, B2, B3, B6, C, E and H. The structure of the market in question shows that, with regard to production, there is surplus capacity as to the means of production which is however concentrated in the hands of a restricted number of undertakings, nine in all.

The contested decision stated that, in addition to the market share, there exists a series of other factors which in certain cases assures Roche of a dominant position. Of these the Court considers as valid evidence the relation between the market shares enjoyed by the undertaking in question and by its competitors, the technological lead which an undertaking enjoys over its competitors, the existence of a highly-developed marketing network and the absence of potential competitors.

Consideration of each of the markets in question shows that, with regard to the vitamin groups A, B2, B6, C, E and H, the conditions for a dominant position were fulfilled. Only in the case of vitamin B3 was it impossible to show that a dominant position existed.

With regard to Roche's conduct on the market examination of its internal documents shows that, far from suffering from competition, it often adopts the rôle of price leader and is capable of precluding any attempt at competition owing to its excellent distribution and marketing organization.

(2) The existence of an abuse of a dominant position

In the contested decision it was maintained that the applicant has abused its dominant position by concluding with 22 important purchasers of vitamins some 30 contracts of sale, which contain an obligation upon those purchasers or which, by the promise of refunds which the Commission defines as fidelity rebates, offer them an incentive, to buy all or most of their requirements exclusively, or in preference, from Roche.

The exclusive dealing agreements or fidelity rebates certainly constitute an abuse of a dominant position within the meaning of Article 86 of the EEC Treaty.

With regard to the "English clause", by this provision a customer who obtains an offer from a competitor with a price which is more favourable than under the contracts in dispute can request Roche to align its prices on the said offer. If Roche fails to accede to this request the customer is free, by way of derogation from his exclusive dealing agreement, to obtain supplies from that competitor without jeopardizing the fidelity rebate provided for in the contracts for other purchases which have already been performed or are still to be performed with Roche. The applicant maintains that this clause cancels out the restrictive effect on competition both of the exclusive dealing agreements and of the fidelity rebates. Nevertheless, closer scrutiny indicates that the opportunities which customers have to benefit from the effects of competition are more restricted than they appear at first sight. In fact, since it obliges Roche's customers to disclose to it more advantageous offers from competitors, and to reveal them in such a way that it is simple for Roche to identify those competitors, the English clause by its very nature provides the applicant with information on the state of the market and the capabilities and plans of its competitors which is of particular value in its market strategy. Ultimately, the Commission was justified in considering that the English clauses written into the contracts in dispute did not prevent those contracts from being classified as an abuse of a dominant position.

(3) The effect on competition and trade between Member States

The applicant appears to argue that the conduct held against it is not capable of impeding trade between Member States. Roche itself attaches great importance to the rebates which it grants and it cannot be conceded that such rebates are irrelevant to its customers. Article 86, in prohibiting the abuse of a dominant position on the market in so far as it may affect trade between Member States, refers not only to practices which may directly prejudice consumers but also covers those which cause indirect prejudice by adversely affecting the structure of effective competition.

The conduct in question was indeed capable of affecting trade between Member States.

The fine

The applicant maintains that because the concepts contained in Article 86 are vague, the Commission is not entitled to impose a fine. This submission was rejected.

With regard to the amount of the fine the inquiry in the case has shown on the one hand that the Commission erred in its appraisal of the applicant's dominant position on the market in the vitamins of group B3 and on the other hand that the duration of the infringement to be taken into consideration in fixing the amount of the fine must be reduced to a period of a little over three years and is thus shorter than the period of five years which the Commission took into consideration.

The Court ruled:

1. The amount of the fine imposed upon Roche as fixed in the first paragraph of Article 3 of Commission Decision IV/29.020 of 9 June 1976 at 300 000 units of account, being DM 1 098 000, is reduced to 200 000 units of account, being DM 732 000.

2. The remainder of the application is rejected.

3. The parties are to bear their own costs.

Opinion of Mr Advocate General G. Reischl delivered on 19 September 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
13 February 1979

Granaria B.V. v Hoofdproduktschap voor Akkerbouwprodukten

Case 101/78

1. Acts of an institution - Regulation - Presumption of validity - Consequences
(EEC Treaty, Articles 173, 174, 177 and 184)

2. Acts of an institution - Regulation - Application by the national authorities - Power to derogate - Absence
(EEC Treaty, Article 189)

3. Preliminary questions - Question relating to the non-contractual liability of the Community - Inadmissibility
(EEC Treaty, Article 177 and second paragraph of Article 215)

4. Member States - Infringement of Community or national law when applying Community law - Non-contractual liability - Assessment according to national law

5. EEC - Non-contractual liability - Determination - Exclusive jurisdiction of the Court
(EEC Treaty, Article 178 and second paragraph of Article 215)

1. It follows from the legislative and judicial system established by the Treaty that, although respect for the principle of the rule of law within the Community context entails for persons amenable to Community law the right to challenge the validity of regulations by legal action, that principle also imposes upon all persons subject to Community law the obligation to acknowledge that regulations are fully effective so long as they have not been declared to be invalid by a competent court.

2. In the absence of any express provision permitting derogations the national authorities having the task of applying a regulation may not grant exemptions from the conditions laid down by that regulation.

3. A question relating to the application of the second paragraph of Article 215 of the Treaty cannot be determined in proceedings for a preliminary ruling.

4. The question of compensation by a national agency for damage caused to private individuals by the agencies and servants of

Member States, either by reason of an infringement of Community law or by an act or omission contrary to national law, in the application of Community law does not fall within the second paragraph of Article 215 of the Treaty and must be determined by the national courts in accordance with the national law of the Member State concerned.

5. The application of the second paragraph of Article 215 of the Treaty falls within the exclusive jurisdiction of the Court of Justice and lies outside that of the national courts.

NOTE

It will be recalled that the judgment of the Court of 5 July 1977 (Case 116/76 Granaria v Hoofdproduktschap voor Akkerbouwprodukten /1977/ ECR 1247) ruled that Council Regulation No. 563/76 of 15 March 1976 on the compulsory purchase of skimmed-milk powder held by intervention agencies for use in feeding-stuffs was null and void.

The present reference, which was made by a Netherlands court, contained a number of questions on the interpretation of various provisions of Community law, especially with regard to liability for damage inflicted by legislation which is declared invalid.

By the first question it was asked whether the competent national administrative authority was obliged to refuse the issue of "protein certificates" pursuant to Regulation No. 563/76 to all persons who did not fulfil the conditions laid down by the regulation so long as the latter had not been declared null and void.

All regulations which have entered into force in accordance with the Treaty must be deemed valid so long as they have not been found invalid by the appropriate authority. It is clear from the legal and judicial order established by the Treaty that, whilst the principle that the Community shall operate in accordance with the law gives persons concerned the right to challenge the validity of regulations before the courts, it also entails for all persons to whom Community law applies the duty to recognize the validity of Community provisions so long as the appropriate authority has not found that they are invalid.

The Court of Justice ruled that so long as Regulation No. 563/76 of 15 March 1976 had not been declared invalid in accordance with the Treaty the national authorities entrusted with the implementation of the regulation were bound, in pursuance of the regulation, to refuse to issue a "protein certificate" to all persons who failed to fulfil the required conditions.

By the second question it was asked whether the Treaty and the principles which are fundamental thereto empower the competent national authorities to exempt an applicant for a "protein certificate" from the obligation to comply with the conditions for the issue of a protein certificate imposed by the regulation in question. The Court of Justice replied in the negative, ruling that, where there is no express derogative provision, the national authorities may not grant exemptions from the conditions laid down by the regulation.

By the last question the Court was asked whether, if the national court had to appraise any liability on the part of the national authority, it would have to apply the second paragraph of Article 215 of the Treaty or be guided exclusively by Netherlands domestic law.

Since the second paragraph of Article 215 of the Treaty refers only to the liability of the Community for damage caused by its institutions or by its servants the determination of the liability of the Community falls within the sole jurisdiction of the Court of Justice.

On this point the Court of Justice ruled that the question of the reparation by a national authority of the damage caused to private individuals by institutions and servants of the Member States either by an infringement of Community law or by an act or omission at variance with national law on occasion of the application of Community law does not come under the second paragraph of Article 215 of the Treaty and must be determined by the national courts on the basis of the national law of the Member State in question.

Opinion of Mr Advocate General F. Capotorti delivered on 23 January 1979.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

20 February 1979

REWE-Zentral AG v Bundesmonopolverwaltung für Branntwein

Case 120/78

1. State monopolies of a commercial character - Specific provision of the Treaty - Scope
(EEC Treaty, Art. 37)

2. Quantitative restrictions - Measures having equivalent effect - Marketing of a product - Disparities between national laws - Obstacles to intra-Community trade - Permissible - Conditions and limits
(EEC Treaty, Art. 30 and 36)

3. Quantitative restrictions - Measures having equivalent effect - Concept - Marketing of alcoholic beverages - Fixing of a minimum alcohol content
(EEC Treaty, Art. 30)

1. Since it is a provision relating specifically to State monopolies of a commercial character, Article 37 of the EEC Treaty is irrelevant with regard to national provisions which do not concern the exercise by a public monopoly of its specific function - namely, its exclusive right - but apply in a general manner to the production and marketing of given products, whether or not the latter are covered by the monopoly in question.

2. In the absence of common rules, obstacles to movement within the Community resulting from disparities between the national laws relating to the marketing of a product must be accepted in so far as those provisions may be recognized as being necessary in order to satisfy mandatory requirements relating in particular to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and the defence of the consumer.

3. The concept of "measures having an effect equivalent to quantitative restrictions on imports", contained in Article 30 of the EEC Treaty, is to be understood to mean that the fixing of a minimum alcohol content for alcoholic beverages intended for human consumption by the legislation of a Member State also falls within the prohibition laid down in that provision where the importation of alcoholic beverages lawfully produced and marketed in another Member State is concerned.

NOTE

The questions which were referred to the Court concern the interpretation of Articles 30 and 37 of the EEC Treaty and are intended to establish whether a provision of German legislation on the marketing of spirits which fixes a minimum wine-spirit content for various categories of spirits is at variance with Community law. Rewe AG wished to import from France a consignment of "cassis de Dijon" for marketing in the Federal Republic of Germany.

It applied to the Bundesmonopolverwaltung (Federal Monopoly Administration) for an import licence which was refused by the administration on the ground that, under the provisions enacted by the Monopolverwaltung, the product in question did not reach the minimum wine-spirit content necessary for marketing in Germany. The plaintiff maintains that the fixing of a minimum wine-spirit content means that certain well-known spirits originating in other Member States cannot be marketed in Germany and that that requirement consequently constitutes a restriction on the free movement of goods between Member States and exceeds such States' residuary legislative powers in commercial matters.

The plaintiff maintains that such legislation constitutes a measure having an effect equivalent to a quantitative restriction which is prohibited under Article 30 of the EEC Treaty and furthermore that it is an infringement of Article 37 of the Treaty whereby the Member States must progressively adjust any State monopolies of a commercial character so as to ensure that when the transitional period has ended no discrimination exists between Member States.

The German court before which proceedings were instituted submitted to the Court of Justice two preliminary questions in order to obtain an interpretation on the basis of which it could decide whether the requirement of a minimum wine-spirit content was covered either by the prohibition on measures having an effect equivalent to quantitative restrictions on trade between Member States (Article 30, EEC Treaty) or by the prohibition on all discrimination regarding the conditions under which goods are procured and marketed between nationals of Member States (Article 37, EEC Treaty).

It should be pointed out that Article 37 is specifically concerned with State monopolies of a commercial character and that in this case, which is concerned in general with the production and marketing of spirits, it is of little relevance whether or not such spirits are covered by the monopoly in question.

In the absence of a common organization it is for the Member States to control on their territory all aspects of the production and marketing of spirits. Nevertheless, barriers to intra-Community trade arising from differences in national law are permissible only if this is absolutely necessary, for example, in supervising revenue matters, or for the protection of consumers.

The Court of Justice did not consider persuasive the argument of the Federal Republic of Germany that the low wine-spirit content might constitute a general danger to health in that the ready accessibility of beverages with a low wine-spirit content might lead to an increased tolerance of spirits.

The Court of Justice likewise rejected the argument based on the protection of consumers, ruling that that protection cannot be extended to such a degree that it is possible to consider the fixing, with binding force, of the minimum wine-spirit content as an essential guarantee of the fairness of commercial transactions, since it is easy to provide appropriate information for the purchaser by requiring the origin and wine-spirit content to be marked on the packaging of products.

Since none of the arguments put forward takes priority over the requirement of the free circulation of goods, which is a principle of the common market, the Court ruled that the concept of "quantitative restrictions on imports and all measures having equivalent effect" appearing in Article 30 of the EEC Treaty must be understood as meaning that the fixing of a minimum wine-spirit content for potable spirits laid down in the legislation of a Member State and applicable in respect of the importation of spirits duly produced and marketed in another Member State, also comes within that concept.

Opinion of Mr Advocate General F. Capotorti delivered on 16 January 1979.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

21 February 1979

Schouten B.V. v Hoofdproduktschap voor Akkerbouwprodukten

Case 113/78

Agriculture - Common organization of the market - Cereals - Levy applicable on the day of importation - Concept of "day of importation" - Interpretation - Objective criteria - Events not attributable to importer - Effect - None
(Regulation No. 120/67 of the Council, Art.15 (1))

The "day of importation" within the meaning of Article 15 (1) of Regulation No. 120/67 of the Council of 13 June 1967 cannot be earlier than that on which the goods were brought to a place designated by the competent national authorities to enable them to make a real and effective customs inspection.

A delay in the dispatch of goods due to events not attributable to the importer cannot affect the interpretation to be given to "day of importation" within the meaning of the above-mentioned provision.

NOTE The main action concerns the fixing of the rate of the levy on a consignment of maize and a consignment of feed pellets from the United States of America and imported into the port of Rotterdam by a ship chartered by the appellant in the main action.

The file shows that that ship, which arrived off Rotterdam on 28 February 1975, had to wait until the berth at which it was to moor became available. It was unable to moor until 1 March 1975. The customs officials accepted a "general declaration" of importation and stamped the date as 28 February 1975.

In those circumstances the appellant in the main action instituted proceedings before the national court in order to establish the "day of importation".

This point was referred to the Court of Justice which ruled that -

1. The "day of importation" within the meaning of Article 15 (1) of Regulation No. 120/67 of the Council of 13 June 1967 cannot be earlier than that on which the goods were brought to a place designated by the competent national authorities to enable them to make a real and effective customs inspection.

2. Events not attributable to the importer cannot affect the interpretation to be given to "day of importation" within the meaning of that provision.

Opinion of Mr Advocate General G. Reischl delivered on 25 January 1979.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

21 February 1979

Stölting v Hauptzollamt Hamburg-Jonas

Case 138/78

1. Agriculture - Common organization of the market - Milk and milk products - Co-responsibility levy - Legality
(Council Regulation No. 1079/77)

2. Agriculture - Common agricultural policy - "Green" exchange rates - System - Legality
(Council Regulation No. 878/77)

1. The validity of Council Regulation No. 1079/77 on the charging of a co-responsibility levy in the milk sector cannot be contested in so far as, by seeking to restrain the production of milk in the face of the surpluses observed, the said co-responsibility levy contributes to the attainment of the objective of stabilizing markets and in so far as the level of the rate of levy does not appear to be disproportionate in relation to the facts which led to its adoption.

2. Although in certain transactions the application of the so-called green exchange rates may possibly involve advantages or disadvantages which may appear as discrimination, it none the less remains true that in general such application serves to remedy monetary situations which in the absence of a measure such as Regulation No. 878/77 would result in much more serious, obvious and general discrimination. Although it is not without certain drawbacks, the adoption of the system of the so-called green exchange rates is therefore justified by the prohibition on discrimination and the requirements of a common agricultural policy.

NOTE

The Finanzgericht Hamburg referred to the Court of Justice questions on the validity of Regulation (EEC) No. 1079/77 of the Council on a co-responsibility levy and on measures for expanding the markets in milk and milk products and of Regulation (EEC) No. 1822/77 of the Commission laying down detailed rules for the collection of the co-responsibility levy introduced in respect of milk and milk products.

The main action turns on the question of the lawfulness of the deduction, pursuant to the said regulations, of a sum of DM 37.31 on deliveries of milk to the buying department of a dairy.

By the first question the Court was asked whether those regulations are invalid because the EEC Treaty contains no power for their adoption.

Regulation No. 1079/77 was based on Article 43 of the Treaty, which must be interpreted in the light of Article 39, which sets out the objectives of the common agricultural policy, and of Article 40, which mentions in paragraph (3) "... regulation of prices, aids for the production and marketing of the various products, storage and carry-over arrangements and common machinery for stabilizing imports or exports".

It is clear from the recitals in the preamble to the regulation in dispute that it is intended to promote the stabilization of the markets in question and thus remains within the framework outlined in Articles 39 and 40.

Consequently the Council, in adopting that regulation, was entitled to take as its basis Article 43 of the Treaty.

Since Regulation No. 1822/77 indisputably constitutes a measure in implementation of Regulation No. 1079/77 the foregoing also applies to it.

By the second question the Court was asked whether the imposition of the co-responsibility levy on milk producers constitutes an infringement of the prohibition on discrimination contained in Article 40 of the Treaty since the rate of the levy is fixed in units of account and its conversion into national currency in accordance with the "green" exchange rates may lead to unequal burdens depending on the position of the various currencies of the Member States.

The Court found that, whilst the application of those rates of exchange may entail advantages or disadvantages which may resemble discrimination, it none the less remains the case that such application is instrumental in remedying currency situations which, but for such application, would result in much more serious, flagrant and general discrimination.

The Court ruled that consideration of the questions raised has disclosed no factor of such a kind as to effect the validity of Regulations Nos. 1079/77 and 1822/77.

Opinion of Mr Advocate General H. Mayras delivered on 25 January 1979.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

20 February 1979

S.A. Buitoni

v

Fonds d'Orientation et de Régularisation des Marchés Agricoles

Case 122/78

Agriculture - Common organization of the market - Import and export licences - System of securities - Obligation to import or export - Fulfilment - Furnishing of proof - Period - Failure to observe period - Penalty - Loss of whole of security - Principle of proportionality - Infringement - Article 3 of Commission Regulation No. 499/76 - Invalid

The penalty laid down in Article 3 of Regulation No. 499/76 must be held to be excessively severe in relation to the objectives of administrative efficiency in the context of the system of import and export licences. In providing for the loss of the whole of the security in the event of non-observance of the period laid down for the furnishing of proof of importation or exportation, the said provision applies a fixed penalty to an infringement which is considerably less serious than that of failure to fulfil the obligation to import or export which the security itself is intended to guarantee, which is sanctioned by an essentially proportionate penalty. Although, in view of the inconvenience caused by the belated production of proofs, the Commission was entitled to introduce a period in this connexion, it should have sanctioned failure to comply with that period only with a penalty considerably less onerous for those concerned than that prescribing the loss of the whole of the security and more closely allied to the practical effects of such an omission. Article 3 of Regulation No. 499/76 is therefore invalid.

NOTE

The Tribunal Administratif (Administrative Court), Paris, referred to the Court of Justice a question concerning the validity and interpretation of a Community provision, Article 3 of Commission Regulation (EEC) No. 499/76 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products. The judgment making the reference indicates that the plaintiff in the main action, subject to the lodging of a security, obtained import licences for a quantity of tomato concentrate from non-member countries and, after it had effected the imports within the period of validity of the licences, the French intervention agency issued a decision refusing to release the security on the ground that the plaintiff had failed to furnish proof, within the period laid down in Article 3 of Regulation No. 499/76, that the imports had been effected.

The plaintiff challenged the validity of the said article on the ground that it infringed the principle of proportionality and further claimed that the article was at variance with the objectives and spirit of the Community system regarding securities.

It claimed in particular that the imposition of the same penalty for failure to effect the importation which the security guarantees and for mere delay in furnishing proof that the undertaking has been duly discharged in good time constitutes a violation of the principle of proportionality.

The Commission relied upon the inconvenience caused by failure to furnish proof in good time; however the Court replied to its argument that, even if for administrative reasons files cannot be held open indefinitely, it must be noted that failure to observe a time-limit is exceptional in nature since it is contrary to the interests of the exporter or importer, who usually endeavours to have the security released as soon as possible.

The Court accordingly ruled that Article 3 of Commission Regulation (EEC) No. 499/76 of 5 March 1976 is invalid.

Opinion of Mr Advocate General F. Capotorti delivered on 30 January 1979.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

22 February 1979

Henri Gourdain v Franz Nadler

Case 133/78

1. Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters - Interpretations - Concepts serving to indicate the scope of the Convention - Independent interpretation
(Convention of 27 September 1968, Art. 1)

2. Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters - Scope - Matters to which the Convention does not apply - Bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analagous proceedings - Exclusion from the scope of the Convention - Conditions
(Convention of 27 September 1968, second paragraph of Article 1)

1. The concepts used in Article 1 of the Convention which serve to indicate its scope must be regarded as independent concepts which must be interpreted by reference, first, to the objectives and scheme of the Convention and, secondly, to the general principles which stem from the corpus of the national legal systems.

2. Bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analagous proceedings are proceedings founded, according to the various laws of the Contracting Parties relating to debtors who have declared themselves unable to meet their liabilities, insolvency or the collapse of the debtor's credit-worthiness, which involve the intervention of the courts culminating in the compulsory "liquidation des biens" in the interest of the general body of creditors of the person, firm or company or at least in supervision by the courts. If decisions relating to bankruptcy and winding-up are to be excluded from the scope of the Convention they must derive directly from bankruptcy or winding-up and be closely connected with proceedings for the "liquidation des biens" or the "règlement judiciaire".

NOTE The Bundesgerichtshof (Federal Court of Justice) referred a question to the Court of Justice concerning the interpretation of

subparagraph 2 of the second paragraph of Article 1 of the Brussels Convention which states that the Convention shall not apply to "bankruptcies, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings".

That question was referred following a judgment by the Cour d'Appel (Appeal Court), Paris, whereby a German manager of a French undertaking, declared to be in liquidation, was ordered to pay part of the undertaking's debts in pursuance of the French Law "sur le règlement judiciaire, la liquidation des biens, la faillite personnelle et les banqueroutes".

The German court dismissed an application for an order for enforcement on the ground that the finding of personal liability as defined in Article 99 of the French law, which is unknown to the German legal system, does not come within the framework of judgments in civil and commercial matters under the Convention but forms part of liquidation proceedings. In the foregoing circumstances the Bundesgerichtshof decided to refer the following question to the Court of Justice:

> "Is a judgment given by French civil courts on the basis of Article 99 of the French Law No. 67/563 of 13 July 1967 against the de facto manager of a legal person for payment into the assets of the company in liquidation to be regarded as having been given in bankruptcy proceedings, proceedings relating to the winding up of insolvent companies or other legal persons and analogous proceedings (Article 1 (2) of the Convention) or is such a judgment a decision given in a civil and commercial matter (first paragraph of Article 1 of the Convention)?"

The Court, in its reply, ruled that a judgment, such as that given by a French civil court on the basis of Article 99 of the French Law No. 67/563 of 13 July 1967 against the de facto manager of a legal person for payment into the assets of the company in liquidation must be considered as given in bankruptcy proceedings, proceedings relating to the winding-up of insolvent companies or other legal persons and analogous proceedings within the meaning of the second paragraph of Article 1 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

Opinion of Mr Advocate General G. Reischl delivered on 7 February 1979.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

22 February 1979

Tinelli v Berufsgenossenschaft der Chemischen Industrie

Case 144/78

1. Social security for migrant workers -Provisions of the Treaty - Duties of Council - Limits
(EEC Treaty, Article 51)

2. Social security for migrant workers - Community rules - Matters to which they apply - Benefits provided by German legislation on substitute pensions (Fremdrentengesetz) - Exclusion
(Regulations Nos. 3 and 1408/71 of the Council)

1. Article 51 of the Treaty refers only to social security benefits, so that the Council is not required to adopt provisions relating to benefits not covered by social security.

2. Benefits of the type provided by the German legislation on substitute pensions (Fremdrentengesetz) by reason of insurance periods completed, prior to 1945, outside the territory of the Federal Republic of Germany are not to be regarded as coming within the sphere of social security, regard being had to the fact that the competent insurance institutions to which the persons referred to by the provision in question were affiliated are no longer in existence or are outside the territory of the Federal Republic of Germany, and the fact that that legislation has the purpose of alleviating certain situations which arose out of events connected with the National Socialist régime and the Second World War, and finally that the payment of the benefits in question is of a discretionary nature where such nationals are residing abroad.

This exclusion from the field of social security applies to an invalidity pension following an accident at work in the same way as it applies to an invalidity pension not following such an accident.

NOTE

The dispute in the main action concerns the right to the payment of an invalidity pension under German legislation of an Italian national, the appellant in the main action, who suffered an accident at work on 27 September 1944 when he was employed at Stassfurt, which is now in the territory of the German Democratic Republic.

On 14 March 1974 the person concerned was refused the said pension on the ground that at the time he was residing outside the territory of the Federal Republic of Germany.

After the appellant transferred his residence to the Federal Republic of Germany the Genossenschaft granted him a pension for the period after 23 June 1976 but persisted in its refusal to grant a pension for the period before that date in reliance upon the Fremdrenten- und Auslandsrentengesetz (Law on substitute pensions and pensions awarded to certain categories of persons residing abroad) of 25 February 1960 in conjunction with Annex V C 1 (b) to Regulation No. 1408/71.

In order to promote the economic and social integration of refugees and displaced persons the German social law recognized, on certain conditions, the claims of the persons concerned, Germans or otherwise. According to that law such claims to pensions are suspended if the person entitled habitually resides outside the territory of the Federal Republic of Germany.

The question referred by the German court is whether Article 50, in conjunction with Annex G 1 A 2, of Regulation No. 3 and Article 89, in conjunction with Annex V C 1 (b), of Regulation No. 1408/71 are at variance with Article 51 of the Treaty.

The German Government emphasized that the Fremdrentengesetz was intended to promote the re-integration, following the events connected with the National Socialist regime, of displaced persons and refugees, who contribute through their work to the recovery of the Federal Republic of Germany.

Such benefits cannot be considered as coming within the field of social security.

The Court of Justice recalled its judgment in Case 79/76 [1977] ECR 667, Fossi, in which it ruled that the provisions of Regulations Nos. 3 and 1408/71 requiring equality of treatment for the nationals of other Member States of the Community do not apply to benefits such as those provided for under German law in respect of insurance periods completed before 1945 outside the territory of the Federal Republic of Germany. Such benefits are excluded from the field of social security within the meaning of the Treaty.

Article 51 of the Treaty states that the Council shall adopt such measures in the field of social security as are necessary to provide freedom of movement for workers and that to this end it shall make arrangements to secure payment of benefits for migrant workers to persons resident in the territories of the Member States.

The Court ruled that, since Article 51 of the Treaty refers exclusively to social security benefits, consideration of Article 50, in conjunction with Annex G 1 A 2, of Regulation No. 3 and Article 89, in conjunction with Annex V C 1 (b), of Regulation No. 1408/71 has disclosed no factor of such a kind as to affect their validity.

Opinion of Mr Advocate General J.-P. Warner delivered on 24 January 1979.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

22 February 1979

Commission of the European Communities v Italian Republic

Case 163/78

Member States - Obligations - Implementation of directives - Failure - Justification - Not acceptable
(EEC Treaty, Art. 169)

A Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits under Community directives.

NOTE

The Commission instituted proceedings before the Court of Justice to obtain a ruling that since the Republic of Italy had not adopted within the prescribed period the provisions necessary to comply with Council Directive No. 75/324 of 20 May 1975 on the approximation of the laws of the Member States relating to aerosol dispensers, it had failed to fulfil an obligation under the Treaty.

The Court found that the obligation had not been fulfilled and ordered the defendant to bear the costs.

Opinion of Mr Advocate General J.-P. Warner delivered on 1 February 1979.

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2. Selected Instruments relating to the Organization, Jurisdiction and Procedure of the Court

3. Bulletin Bibliographique de Jurisprudence Communautaire

The "Bulletin Bibliographique de Jurisprudence Communautaire" is the continuation of the "Bibliography of European Judicial Decisions", Supplement No. 6 of which was published in 1976. The layout of the "Bulletin" is the same as that of the "Bibliography". Therefore the footnotes refer to the "Bibliography". The period of collection and compilation covered by the bulletins which have already appeared is from February 1976 to June 1978.

The above publications are on sale at the booksellers whose addresses are given below:

Belgium: Ets. Emile Bruylant, Rue de la Régence 67, 1000 BRUSSELS
Denmark: J.H. Schultz Boghandel, Møntergade 19, 1116 COPENHAGEN K
France: Editions A. Pedone, 13 Rue Soufflot, 75005 PARIS
Germany: Carl Heymann's Verlag, Gereonstrasse 18-32, 5000 KÖLN 1
Ireland: Stationery Office, Beggar's Bush, DUBLIN 4
Italy: Casa Editrice Dott. A. Milani, Via Jappelli 5, 35100 PADUA
Luxembourg: Office for Official Publications of the European Communities, Case Postale 1003, LUXEMBOURG
Netherlands: NV Martinus Nijhoff, Lange Voorhout 9, 's GRAVENHAGE
United Kingdom: Sweet & Maxwell Ltd., North Way, ANDOVER, HANTS, SP10 5BE
Other Countries: Office for Official Publications of the European Communities, Case Postale 1003, LUXEMBOURG.

B. Publications issued by the Information Office of the Court of Justice

Requests for these four publications as they appear must be sent to the Information Office, stating the language required. This service is free of charge (P.O. Box 1406, Luxembourg, Grand Duchy of Luxembourg).

1. Proceedings of the Court of Justice of the European Communities

Weekly summary of the proceedings of the Court published in the six official languages of the Community. This document is available from the Information Office.

2. Information on the Court of Justice

Quarterly bulletin containing the heading and a short summary of the judgments delivered by the Court of Justice.

3. Annual synopsis of the work of the Court of Justice

Annual publication containing a summary of the work of the Court of Justice covering both cases decided and other activities (seminars for judges, visits, study groups, etc.). This publication contains much statistical information.

4. General Booklet of Information on the Court of Justice

This booklet is published in the six official languages of the Community and in Spanish and Irish. It may be obtained from the Information Office of the Court of Justice.

C. Publications issued by the Documentation Branch of the Court of Justice

1. Summary of the case-law on the EEC Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters

Three parts have been published. Copies may be obtained from the Documentation Branch of the Court of Justice, P.O. Box 1406, Luxembourg.

D. Compendium of Case-Law relating to the European Communities
Répertoire de la jurisprudence relative aux traités instituant les Communautés européennes
Europäische Rechtsprechung

Extracts from cases decided by the Court of Justice relating to the Treaties establishing the European Communities published in German and French. Extracts from judgments of national courts are also published in the original language.
The German and French editions are available from: Carl Heymann's Verlag, Gereonstrasse 18-32, D-5000 COLOGNE 1, Federal Republic of Germany.

As from 1973 an English edition has been added to the complete French and German editions. The first three volumes of the English series are on sale from: Elsevier - North Holland, Excerpta Medica, P.O. Box 211, AMSTERDAM, The Netherlands.

III. Visits

Sessions of the Court are held on Tuesdays, Wednesdays and Thursdays every week, except during the Court's vacations - that is, from 20 December to 6 January, the week preceding and two weeks following Easter, and from 15 July to 10 September.

The full list of public holidays in Luxembourg set out below should also be noted. Visitors may attend public hearings of the Court or of the Chambers so far as the seating capacity will permit. No visitor may be present at cases heard in camera or during proceedings for the adoption of interim measures. Each group visit must be notified to the Information Office of the Court of Justice.

Public holidays in Luxembourg

In addition to the Court's vacations mentioned above the Court of Justice is closed on the following days:

New Year's Day	1 January
Easter Monday	variable
Ascension Day	variable
Whit Monday	variable
May Day	1 May
Luxembourg National Day	23 June
Assumption	15 August
"Schobermesse" Monday	Last Monday of August or first Monday of September
All Saints' Day	1 November
All Souls' Day	2 November
Christmas Eve	24 December
Christmas Day	25 December
Boxing Day	26 December
New Year's Eve	31 December

IV. Summary of types of procedure before the Court of Justice

It will be remembered that under the Treaties a case may be brought before the Court of Justice either by a national court or tribunal with a view to determining the validity or interpretation of a provision of Community law, or directly by the Community institutions, Member States or private parties under the conditions laid down by the Treaties.

A. References for preliminary rulings

The national court or tribunal submits to the Court of Justice questions relating to the validity or interpretation of a provision of Community law by means of a formal judicial document (decision, judgment or order) containing the wording of the question(s) which it wishes to refer to the Court of Justice.

This document is sent by the Registry of the national court to the Registry of the Court of Justice, accompanied in appropriate cases by a file intended to inform the Court of Justice of the background and scope of the questions referred.

During a period of two months the Commission, the Member States and the parties to the national proceedings may submit observations or statements of case to the Court of Justice, after which they are summoned to a hearing at which they may submit oral observations, through their Agents in the case of the Commission and the Member State or through lawyers who are entitled to practise before a court of a Member State.

After the Advocate General has delivered his opinion, the judgment is given by the Court of Justice and transmitted to the national court through the Registries.

B. Direct actions

Actions are brought before the Court by an application addressed by a lawyer to the Registrar (P.O. Box 1406, Luxembourg), by registered post.

Any lawyer who is entitled to practise before a court of a Member State or a professor occupying a chair of law in a university of a Member State, where the law of such State authorizes him to plead before its own courts, is qualified to appear before the Court of Justice.

The application must contain:

The name and permanent residence of the applicant;

The name of the party against whom the application is made;

The subject-matter of the dispute and the grounds on which the application is based;

The form of order sought by the applicant;

The nature of any evidence offered;

An address for service in the place where the Court of Justice has its seat, with an indication of the name of a person who is authorized and has expressed willingness to accept service.

The application should also be accompanied by the following documents:

The decision the annulment of which is sought, or, in the case of proceedings against an implied decision, by documentary evidence of the date on which the request to the institution in question was lodged;

A certificate that the lawyer is entitled to practise before a court of a Member State;

Where an applicant is a legal person governed by private law, the instrument or instruments constituting and regulating it, and proof that the authority granted to the applicant's lawyer has been properly conferred on him by someone authorized for the purpose.

The parties must choose an address for service in Luxembourg. In the case of the Governments of Member States, the address for service is normally that of their diplomatic representative accredited to the Government of the Grand Duchy. In the case of private parties (natural or legal persons) the address for service - which in fact is merely a "letter box" - may be that of a Luxembourg lawyer or any person enjoying their confidence.

The application is notified to the defendant by the Registry of the Court of Justice. It requires the submission of a statement of defence; these documents may be supplemented by a reply on the part of the applicant and finally a rejoinder on the part of the defendant.

The written procedure thus completed is followed by an oral hearing, at which the parties are represented by lawyers or agents (in the case of Community institutions or Member States).

After hearing the opinion of the Advocate General, the Court gives judgment. This is served on the parties by the Registry.

This Bulletin is distributed free of charge to judges, advocates and practising lawyers in general on application to one of the Information Offices of the European Communities at the following addresses:

I. COUNTRIES OF THE COMMUNITY

BELGIUM

1040 Brussels (Tel. 7350040)
Rue Archimède 73

DENMARK

1004 Copenhagen (Tel. 144140)
Gammel Torv 4
Postbox 144

FEDERAL REPUBLIC OF GERMANY

5300 Bonn (Tel. 238041)
Zitelmannstrasse 22

1000 Berlin 31 (Tel. 892 40 28)
Kurfürstendamm 102

FRANCE

75782 Paris CEDEX 16 (Tel. 5015885)
Rue des Belles Feuilles 61

IRELAND

Dublin 2 (Tel. 760353)
29 Merrion Square

ITALY

00187 Rome (Tel. 689722)
Via Poli 29

LUXEMBOURG

Luxembourg-Kirchberg (Tel. 430111)
Centre Européen
Jean Monnet Building

NETHERLANDS

The Hague (Tel. 469326)
Lange Voorhout 29

UNITED KINGDOM

London W8 4QQ (Tel. 7278090)
20, Kensington Palace Gardens

Cardiff CF1 9SG (Tel. 371631)
4, Cathedral Road
P.O. Box 15

Edinburgh EH 2 4PH (Tel. 2252058)
7, Alva Street

II. NON-MEMBER COUNTRIES

CHILE

Santiago 9 (Tel. 250555)
Avenida Ricardo Lyon 1177
Casilla 10093

CANADA

Ottawa Ont. KIR 7S8 (Tel.(613)-2386464)
Inn of the Provinces - Office
Tower (Suite 1110)
350 Sparks Street

USA

Washington DM 20037 (Tel. 202.-8629500)
2100 M Street, NW
Suite 707

New York NY 10017 (Tel. 212.-3713804)
1, Dag Hammarskjöld Plaza
245 East 47th Street

GREECE

Athens 134 (Tel. 743982)
2, Vassilissis Sofias
T.K. 1602

JAPAN

Tokyo 102 (Tel. 2390441)
Kowa 25 Building
8-7 Sanbancho
Chiyoda-Ku

SWITZERLAND

1211 Geneva 20 (Tel. 349750)
Case Postale 195
37-39, Rue de Vermont

TURKEY

Ankara (Tel. 276145)
13, Bogaz Sokak
Kavaklidere

VENEZUELA

Caracas (Tel. 914707)
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